

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA

Case No. 7:04-cr-00128-1

v.

MEMORANDUM OPINION

**WENDELL ANTONIO JOHNSON,
Petitioner.**

**By: Hon. Michael F. Urbanski
United States District Judge**

Wendell Antonio Johnson, a federal inmate proceeding pro se, filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Court records indicate that the court already dismissed a prior § 2255 motion in which the current claims could have been raised. (ECF Nos. 197, 209). Thus, the instant § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). Cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, the court dismisses the § 2255 motion without prejudice as successive. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied. Pursuant to Standing Order 2015-5, the Federal Public Defender has been appointed to advise Petitioner about pursuing certification from the Court of Appeals.

Entered: November 2, 2015

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge